

IN THE COURT OF APPEALS OF IOWA

No. 1-616 / 11-0757
Filed August 24, 2011

**IN THE INTEREST OF A.N.,
Minor Child,**

**A.M.B., Mother,
Appellant,**

**I.P.N., Father,
Appellant.**

Appeal from the Iowa District Court for Dallas County, Virginia Cobb,
District Associate Judge.

A mother and father appeal separately from the order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Thomas Crabb, Des Moines, for appellant mother.

David Pargulski of Pargulski, Hauser & Clarke, P.L.C., Des Moines, for
appellant father.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, Wayne Reisetter, County Attorney, and Sean Wieser, Assistant County
Attorney, for appellee State.

Christine Sand, Guthrie Center, for minor child.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

A father and mother appeal from the order terminating their parental rights to their four-year-old son. The father contends the State failed to prove the grounds for termination by clear and convincing evidence. The mother contends termination is not in the child's best interests. Considering the father's continued drug use and lack of progress toward meeting case plan requirements, we affirm termination of his parental rights. Considering the mother's instability and inability to safely parent the child, we conclude termination of the mother's parental rights is in the best interests of the child and affirm the decision of the juvenile court.

I. Background Facts and Proceedings.

This family came to the attention of the Iowa Department of Human Services (DHS) in July 2009, due to the child's exposure to domestic violence between the parents, including one incident when the mother was holding the child while the father struck her. There were also concerns about the parents' drug use. The father had domestic assault charges and possession of controlled substances charges pending. The child was adjudicated in need of assistance in October 2009, and services were offered and received by the parents. The child remained in the custody of the mother until December 2009, when the parents agreed to his placement with the maternal grandmother, Carolyn.

However, the child spent every weekend at the home of "Grandma Val," a close family friend who had been a significant presence throughout his young life. In January 2011, Carolyn indicated she could no longer care for the child, and the court entered a permanency order placing him in Val's custody. He has

remained in the home of Val and her husband Fred, and they are in the process of completing the requirements to adopt him if parental rights are terminated.

The parents ended their relationship shortly after the child was removed from their home. They both have histories of drug use. Over the course of nearly two years, the parents' progress toward meeting case plan requirements has been inconsistent and unsatisfactory. The most significant reason for their lack of progress can only be explained by their continued drug use throughout these proceedings.

The mother began a new relationship with Jon. She moved in with Jon to his grandmother's house, then his father's house, and then another relative's house. DHS caseworkers have restricted Jon from having any contact with the child due to Jon's drug use, yet the mother has continued her relationship with him. The mother has not had consistent or significant visitation with the child. The mother obtained employment at Arby's, but she was subsequently fired due to absenteeism, which she attributed to a lack of reliable transportation. She obtained employment at Breadeaux Pizza, but was fired when she relapsed to methamphetamine use and was arrested for a probation violation. The mother spent time in jail awaiting placement in a treatment program after her relapse to meth. In March 2011, the mother entered a long-term dual-diagnosis treatment facility in Burlington.

In addition to drug use, the father also has a history of domestic violence. He moved in with his new paramour, Beth, and her three children to their apartment in Perry. He is unemployed, but provides care for the children in the evenings while Beth is at work at Subway. The father has maintained visitation

with the child, including overnight visitation. These visits have been supervised. In September 2010, the father was arrested on public intoxication charges in violation of his probation. He spent time in jail and was sentenced to community service. He completed in-patient treatment, as well as out-patient treatment. However, the father has continued to refuse to provide hair stats, missed scheduled urinalyses, and declined to do drug patches. The father has not completed a batterer's education program or consistently attended therapy per case plan requirements, despite numerous reminders from caseworkers.

At the time of the permanency review hearings held January 2011, and again in March 2011, the parents had not made sufficient progress toward providing evidence of their ability to care for the child. In the meantime, the child had grown attached to Val and Fred, believed they were his family, and thrived in their care. Although the child appeared to share a strong bond with the mother, he had spent time with her only sporadically over the past year. The child had spent more time in visitation with the father, his behavior deteriorated after those visits, and eventually the child began to get visibly upset at the mention of the father's name.

The State, caseworkers, and guardian ad litem unanimously recommended termination of parental rights. Following a termination hearing in April 2011, the juvenile court entered its order terminating the father and mother's parental rights pursuant to Iowa Code sections 232.116(1)(d) and (h) (2009). The father and mother appeal.

II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Section 232.116(1)(h) allows

for termination where (1) the child is three or younger,¹ (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the parent's custody for the last six consecutive months, and (4) the child cannot be returned to the parent's custody at the present time. The mother concedes the grounds for termination have been proved.

The father argues the State has failed to prove the child could not be returned to him at the time of the termination hearing. The father points out that he babysits his girlfriend Beth's three children while she works in the evenings, usually from 4:00 p.m. to 11:00 p.m. He states the State's lack of intervention with regard to those children "clearly shows" the State believed they were "receiving appropriate care and treatment." He argues his recent past performance shows he can appropriately care for children, "even as DHS looks on those circumstances in judgment."

The father has a longstanding history of domestic violence and drug abuse issues, neither of which is resolved. The father's tendencies toward violence have extended into his relationship with Beth, who has an open case with DHS in regard to her own children, and is required to have a safety plan in respect to the father. Beth has had to implement the safety plan approximately three to five times due to arguments with the father, and he has been required to leave the residence. During these times, he stays with his mother and is not allowed to see Beth or the children. The father was also recently involved in a violent incident involving his sister. Yet, the father has still not completed batterer's education, part of the initial case plan requirements.

¹ The child turned four years old after the termination hearing.

Also troubling is the father's inconsistency in providing or successfully completing drug screens and tests. The father testified that he stopped providing urine drug screens because DHS took away his overnight visits, and he didn't "think that was quite fair."² He also failed to regularly attend AA/NA meetings and therapy. In the two months preceding the termination hearing, the father had attended therapy only one time.

The father admitted he had knowingly not complied with many of DHS requirements, but stated the child should be returned to his care "[b]ecause that's where he should be." The father testified that he did not know exactly what he would have to do to complete the case plan. The father's testimony is not credible. The father also acknowledged he had not complied with his probation or the case plan requirements.

We agree with the juvenile court that the father has not corrected the conditions that led to the initial adjudication and removal. He has a history of unresolved drug use. He also has a history of violent and threatening relationships and interactions, at least some of which the child has been exposed to. Although the father provides care for his girlfriend's children, as the court noted, being a caretaker is different than being a parent, and for safety reasons, he has not always been permitted to be in his girlfriend's home.

The child has been out of the father's care since December 2009. The father has not sufficiently followed through with recommendations for therapy, batterer's education, or anger management services. The father failed some

² In fact, the overnight visits were discontinued due to transportation issues and missed visits. Also, the child's behavior worsened after overnight visits occurred.

drug screens and eventually stopped providing urine samples altogether. It is clear the father is not a safe and appropriate placement for the child, and the child cannot be returned to his care. We find clear and convincing evidence that grounds for termination exist under section 232.116(1)(h).

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.* Taking these factors into account, we conclude the child's best interests require termination of the father and mother's parental rights.

The mother argues the court erred in failing to order a permanent planned living arrangement with Val under section 232.104(2)(d)(4), to allow the mother six additional months to complete substance abuse treatment, find her own residence, and resume care of the child. We disagree. The mother has had nearly two years to address her issues. Although the mother and Val have a close, long-term relationship, Val has proven she will do whatever is necessary to keep the child safe, even if it includes limiting the child's contact with the mother. We will not gamble with a child's future by asking him to continuously wait for a stable biological parent, particularly at such a tender age. *See In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). The juvenile court considered evidence from

caseworkers and the guardian ad litem that the child's interests are best served by termination of parental rights and adoption by Val and Fred.

The child is not safe in the parents' care, and the parents are not able to provide for his long-term nurturing and growth. It would be a detriment to the child's physical, mental, and emotional condition to maintain these parent-child relationships.

C. Exceptions or Factors against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary, including the presence of evidence "that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." See Iowa Code § 232.116(3)(c). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Caseworkers indicated a bond does exist between the parents and the child. However, the bond is limited considering the child's young age and the time he has spent out of their care. Further, the mother has exercised minimal visitation with the child, and the father's visitation has been disrupted by his incarceration and inpatient treatment. There is also evidence the child's behavior deteriorates after visitation with the father. The child has lived in the home of a close family friend part-time since December 2010 and full-time since January

2011. He is bonded to that family, and they are willing to adopt him. Under these circumstances, we cannot maintain a relationship where there exists only a possibility the father or mother will become a responsible parent sometime in the unknown future.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the child's best interests pursuant to 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the father and mother's parental rights.

AFFIRMED ON BOTH APPEALS.